

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

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Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

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FEDERAL MARITIME COMMISSION

46 CFR Parts 501, 502, 503, 504, 514, 515, 550, 552, 560, 572, 580, 581, 582, and 583

[Docket No. 95-01]

Filing of Tariffs by Marine Terminal Operators, Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce; Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States; Service Contracts

AGENCY: Federal Maritime Commission.
ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission") is removing its rules relating to Filing of Tariffs by Marine Terminal Operators; Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce; Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States; and Service Contracts. These regulations contain the guidelines, standards, and procedures for marine terminal operators ("MTO's") and common carriers by water to file and publish their tariffs and/or service contract essential terms with the Commission in paper format. With the full scale implementation of the Commission's Automated Tariff Filing and Information System ("ATFI"), which now requires tariffs and service contracts to be filed electronically, these regulations are no longer necessary. The Commission is also amending various other regulations to delete references to removed regulations and add replacement citations.

EFFECTIVE DATE: May 23, 1995.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission initiated this proceeding by publishing a Notice of Proposed Rulemaking ("NPR") in the **Federal Register** on January 12, 1995. The NPR solicited comments on a

proposal to remove certain regulations that governed the filing of tariffs and service contracts: 46 CFR Part 515, Filing of Tariffs by Marine Terminal Operators; 46 CFR Part 550, Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce; 46 CFR Part 580, Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States; and 46 CFR Part 581, Service Contracts.

The Commission is removing these parts because ATFI is now fully implemented and all MTO's and common carriers are now required to file their tariffs and service contracts in electronic format. (See Public Law 102-582, the High Seas Driftnet Fisheries Enforcement Act, section 502 of which directs carriers to "file electronically with the Commission all tariffs and all essential terms of service contracts required to be filed" by the 1916, 1933, or 1984 Acts; see also, 46 CFR Part 514).

The Commission did not receive any comments on the proposal to remove these regulations. The Commission is therefore adopting the proposed rule as its final rule; and in addition, the Commission is amending Parts 501, 502, 503, 504, 514, 552, 560, 572, 582, and 583 to delete references to the above removed parts and to add replacement citations. Also, 46 CFR § 514.15 is amended by removing paragraph (b)(23)(ii) which erroneously refers to Part 525 which was previously removed by the Commission. These additional changes were not part of the NPR and are not substantive changes.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental organizations. "The criteria contained in this section requires the agency head to examine both the degree of impact as well as the dispersion of that impact." S. Rep. No. 878, 96th Cong., 2d Sess. 14 (1980) reprinted at 1980 U.S. Code Cong. and Admin. News, p. 2788 at 2801. The Commission does not believe that the removal of Parts 515, 550, 580 and 581 under the circumstances described above will result in an impact upon a substantial number of small entities.

This final rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 501

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies), Seals and insignia.

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 503

Classified information, Freedom of information, Privacy, Sunshine Act.

46 CFR Part 504

Environmental impact statements, Reporting and recordkeeping requirements.

46 CFR Part 514

Freight, Harbors, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 515

Freight, Harbors, Reporting and recordkeeping requirements, Warehouses.

46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 552

Maritime carriers, Reporting and recordkeeping requirements, Uniform System of Accounts.

46 CFR Part 560

Administrative practice and procedure, Antitrust, Freight, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 572

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 580

Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 581

Freight, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 582

Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 583

Freight, Maritime carriers, Reporting and recordkeeping requirements, Surety bonds.

Therefore, pursuant to 5 U.S.C. 553; sections 17 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 816, 841(a)); sections 2, 3, 4, and 5 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, 844, 845, 845(a), 845(b), 847); sections 8, 10, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707, 1709, 1716); chapter IV of title 46 of the Code of Federal Regulations is amended as follows:

PART 515—[REMOVED]

1. Part 515 is removed.

PART 550—[REMOVED]

2. Part 550 is removed.

PART 580—[REMOVED]

3. Part 580 is removed.

PART 581—[REMOVED]

4. Part 581 is removed.

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

5. The authority citation for Part 501 continues to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. app. 801–848, 876, 1111, and 1701–1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub. L. 89–56, 79 Stat. 195; 5 CFR Part 2638.

6. Section 501.5 is amended by revising the second sentence of paragraph (h) introductory text to read as follows:

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

* * * * *

(h) * * * These programs carry out provisions of the Shipping Act, 1933; the Shipping Act of 1984; and Pub. L. 89–777, as implemented under Parts 510, 514, 540, 552, 582 and 583 of this chapter. * * *

* * * * *

7. Section 501.23 is revised to read as follows:

§ 501.23 Delegation to the General Counsel.

The authority listed in this section is delegated to the General Counsel: Authority to classify carriers as state-controlled carriers within the meaning of section 3(8) of the Shipping Act of 1984, except where a carrier submits a

rebuttal statement pursuant to § 514.4(c)(2)(ii) of this chapter.

8. Section 501.27 is amended by revising paragraphs (i), (j), and (k) to read as follows:

§ 501.27 Delegation to and redelegation by the Director, Bureau of Tariffs, Certification and Licensing.

* * * * *

(i) Authority contained in § 514.7(j) of this chapter to notify filing parties of the Commission's intent to reject a service contract and/or statement of essential terms and subsequently reject and return such contracts.

(j) Authority contained in part 514 of this chapter to approve, but not deny, requests for permission to correct clerical or administrative errors in the essential terms of filed service contracts.

(k) Authority contained in parts 514 and 583 of this chapter to cancel the tariffs of NVOCCs who fail to file a surety bond, guaranty or insurance policy or, if required, designate an agent for receipt of process, or whose surety bond or agent designation is canceled.

* * * * *

PART 502—RULES OF PRACTICE AND PROCEDURE

9. The authority citation for Part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 817, 820, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a; and Pub. L. 88–777 (46 U.S.C. app. 817d, 817e).

10. Section 502.67 is amended by revising the first sentence of paragraph (b)(2) to read as follows:

§ 502.67 Proceedings under section 3(a) of the Intercoastal Shipping Act, 1933.

* * * * *

(b) * * *

(2) Protests against across-the-board increases, as defined in § 514.2 of this chapter, and against other proposed changes in tariffs filed on at least thirty (30) days' notice, shall be filed and served no later than twenty (20) days prior to the proposed effective date of the change. * * *

* * * * *

PART 503—PUBLIC INFORMATION

11. The authority citation for Part 503 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

12. Section 503.32 is amended by revising paragraph (d) to read as follows:

§ 503.32 Records generally available.

* * * * *

(d) Terminal tariffs filed pursuant to part 514 of this chapter.

* * * * *

PART 504—PROCEDURES FOR ENVIRONMENTAL POLICY ANALYSIS

13. The authority citation for Part 504 continues to read as follows:

Authority: 5 U.S.C. 552, 553; secs. 21 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 820 and 841a); secs. 13 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1712 and 1716); sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(b) and sec. 382(b) of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6362).

14. Section 504.4 is amended by removing the semicolon at the end of paragraphs (a)(2), (a)(4), and (a)(5) and adding a period in its place and by revising paragraphs (a)(6) and (a)(7) to read as follows:

§ 504.4 Categorical exclusions.

* * * * *

(a) * * *

(6) Consideration of special permission applications filed pursuant to 46 CFR part 514.

(7) Receipt of terminal tariffs pursuant to 46 CFR part 514.

* * * * *

PART 514—TARIFFS AND SERVICE CONTRACTS

15. The authority citation for Part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

16. Section 514.1 is amended by revising the first sentence of paragraph (c)(1)(iii)(E) to read as follows:

§ 514.1 Scope, purpose, requirements, penalties and fees.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(E) The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days' notice period will not be canceled; however, the common carrier will be subject to civil penalties as provided in parts 502 and 582 of this chapter. * * *

* * * * *

§ 514.15 [Amended]

17. Section 514.15 is amended by removing and reserving paragraph (b)(23)(ii).

PART 552—FINANCIAL REPORTS OF VESSEL OPERATING COMMON CARRIERS BY WATER IN THE DOMESTIC OFFSHORE TRADES

18. The authority citation for Part 552 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a and 847.

19. Section 552.1 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 552.1 Purpose.

(a) * * * Compliance is mandatory and failure to file the reports required under this part may result in denial of rate increases or rejection of tariff line items implementing rate changes or penalties of up to \$100 for each day of such default (46 U.S.C. app. 820(a)).

* * * * *

20. Section 552.5 is amended by revising paragraphs (b) and (c) to read as follows:

§ 552.5 Definitions.

* * * * *

(b) *The service* means those voyages and/or terminal facilities in which cargo subject to the Commission's regulation under part 514 of this chapter is either carried or handled.

(c) *The trade* means that part of the Service subject to the Commission's regulation under part 514 of this chapter, more extensively defined under *Domestic offshore trade* in paragraph (f) of this section.

* * * * *

PART 560—AGREEMENTS BY COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT, 1916

21. The authority citation for Part 560 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 814, 817(a), 820, 821, 833a, and 841a.

22. Section 560.308 is amended by revising the first sentence of paragraph (a) introductory text to read as follows:

§ 560.308 Marine terminal services agreements—exemption.

(a) *Marine terminal services agreement* means an agreement, contract, understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) between a marine terminal

operator and a common carrier by water in interstate commerce that applies to marine terminal services as defined in 46 CFR 514.2 (including any marine terminal facilities, as defined in 46 CFR 514.2, which may be provided incidentally to such marine terminal services) that are provided to and paid for by a common carrier by water in interstate commerce. * * *

* * * * *

23. Section 560.702 is amended by revising the last sentence of paragraph (c) to read as follows:

§ 560.702 Filing of minutes—including shippers' requests and complaints.

* * * * *

(c) * * * This reporting exemption does not apply to discussions involving general rate policy, general rate changes, the opening or closing of rates, or discussions involving items, that if adopted, would be required to be published in other tariff sections as specified in Part 514 of this chapter.

* * * * *

PART 572—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

24. The authority citation for Part 572 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

25. Section 572.310 is amended by revising the first sentence of paragraph (a) introductory text to read as follows:

§ 572.310 Marine terminal services agreements— exemption

(a) *Marine terminal services agreement* means an agreement, contract, understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) between a marine terminal operator and an ocean common carrier that applies to marine terminal services as defined in 46 CFR 514.2 (including any marine terminal facilities, as defined in 46 CFR 514.2, which may be provided incidentally to such marine terminal services) that are provided to and paid for by an ocean common carrier. * * *

* * * * *

26. Section 572.801 is amended by revising the last sentence of paragraph (b)(1) to read as follows:

§ 572.801 Independent action.

* * * * *

(b) (1) * * * A conference agreement shall not require or permit a conference member to give more than 10 calendar

days' notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the requirements of § 514.9(b) of this chapter.

* * * * *

PART 582—CERTIFICATION OF COMPANY POLICIES AND EFFORTS TO COMBAT REBATING IN THE FOREIGN COMMERCE OF THE UNITED STATES

27. The authority citation for Part 582 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701, 1702, 1707, 1709, 1712, and 1714–1716.

28. Section 582.1 is amended by revising the third sentence of paragraph (b) to read as follows:

§ 582.1 Scope.

* * * * *

(b) * * * Failure of a common carrier to file an anti-rebate certification and publish notice of certification in its tariffs as provided by this part and part 514 of this chapter will result in tariff cancellation effective forty-five (45) days after notice, as provided in § 514.1(c)(1)(iii)(C) of this chapter or, if an initial tariff filing, rejection. * * *

PART 583—SURETY FOR NON-VESSEL-OPERATING COMMON CARRIERS

29. The authority citation for Part 583 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710–1712, 1716 and 1721.

30. Section 583.5 is amended by revising paragraphs (d) and (e) to read as follows:

§ 583.5 Resident agent.

* * * * *

(d) Designations of resident agent under paragraphs (a) and (b) of this section and provisions relating to service of process under paragraph (c) of this section shall be published in the NVOCC's tariff in accordance with § 514.15(b)(24) of this chapter.

(e) Every non-vessel-operating common carrier using a group or association of NVOCCs to cover all or part of its financial responsibility requirement under § 583.4 shall publish the name and address of the group or association's resident agent for receipt of judicial and administrative process, including subpoenas, in its tariff in accordance with § 514.15(b)(24)(ii) of this chapter.

31. Section 583.7 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 583.7 Proof of Compliance.

* * * * *

(b) * * *

(2) Reviewing a copy of the tariff rule published by the NVOCC and in effect under § 514.15(b)(24) of this chapter; or

(3) Any other appropriate procedure, provided that such procedure is set forth in the carrier's tariff of general applicability as required by § 514.15(b)(25) of this chapter.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95-12511 Filed 5-22-95; 8:45 am]

BILLING CODE 6730-01-W

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. HM-208B, Amdt. No. 107-34]

RIN 2137-AC58

Hazardous Materials Transportation Registration and Fee Assessment Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is maintaining the current annual registration fee of \$300 (which includes a \$50 processing fee), for persons engaged in transporting or offering for transportation certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. In addition, this final rule adopts two changes to the statutorily mandated registration and fee assessment program. Applicability of the registration requirement to materials that are extremely toxic by inhalation (Hazard Zone A) is expanded to include materials in a hazard class or division other than Division 2.3 or Division 6.1. RSPA is also adopting an exception from the registration requirement for foreign offerors, as authorized by the amended statute.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366-4484, or Joan McIntyre, Office of Hazardous Materials Standards, (202) 366-4488, RSPA, Department of

Transportation, 400 Seventh Street SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 1992, RSPA published a final rule under Docket HM-208 [57 FR 30620], establishing a national registration and fee assessment program, as required by 49 U.S.C. 5108 *et seq.* (Federal hazardous materials transportation law), for persons engaged in transporting or offering for transportation certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. Persons subject to the registration program are required to file annually a registration statement with RSPA and pay a total annual fee of \$300, of which \$250 is used to fund the Hazardous Materials Public Sector Training and Planning Grants Program, and \$50 is used to offset processing costs. The registration fee of \$250 is the minimum amount permitted under the statute. Grants to States and Indian tribes are expected to total more than \$20 million through 1995, the third year that this program has been in effect. Average annual funding levels (\$6.3 million) however have been below the congressionally authorized level of \$18.975 million per year.

On January 30, 1995, RSPA issued a notice of proposed rulemaking (NPRM) (Docket HM-208B; 60 FR 5822) that proposed changes to increase the annual registration fee for certain persons. The NPRM distinguished between large, medium, and small entities that conduct operations in one or more of the five categories for which registration is required. RSPA proposed a four-level fee structure that considered the comparative risks that may be posed by the types and quantities of transportation activities covered by the registration requirement. The annual fee, under the graduated fee schedule proposed by RSPA, would be determined on the basis of the registrant's transportation activity during the prior calendar year: large (\$5,050), medium (\$2,550), small (\$500), and low (\$300).

II. Graduated Fee Schedule

More than 350 comments were received in response to the NPRM. Commenters opposing the increased fee schedule generally claimed that improved compliance efforts would eliminate the need to increase the fees to fully fund the grant program. Twelve commenters who supported the proposal to increased fees representing several States and local emergency

response organizations that benefit directly from the grants program indicated a need for increased funding for grants. Approximately 100 inquiries were forwarded by Members of Congress on behalf of their constituents. Many commenters raised several complex issues and suggested various funding alternatives.

As indicated in the notice of proposed rulemaking, an Industry Working Group (IWG), facilitated by the Hazardous Materials Advisory Council, and reflecting the perspective of many persons subject to the registration and fee collection requirements, provided recommendations on how the registration and fee collection requirement could be improved. Those recommendations contain the basic themes that are reflected in many of the 350 comments. In addition, the IWG offered numerous suggestions on how RSPA may be able to more effectively communicate registration requirements in non-technical language that the regulated community can more easily understand. RSPA has revised its brochure describing the registration program to reflect many of changes suggested by the IWG.

RSPA received comments on behalf of the Alliance for Uniform Hazmat Transportation Procedures (Alliance), the National Conference of State Legislatures (NCSL), and the National Association of SARA Title III Officials. These commenters, reflecting the perspective of entities that benefit from the State and Indian tribe grant program funded by the fee, also generally opposed RSPA's proposed graduated fee structure. For example, NCSL believes that because RSPA has not generated, collected, or disbursed what NCSL considers as "modestly authorized levels," the purpose of the Federal program has been eroded. NCSL strongly recommended that RSPA reevaluate the Federal registration program with an eye toward elimination. The Alliance opposed the fee schedule and believes that RSPA's actions will create obstacles in the registration of motor carriers by States and that implementation of the proposed fee schedule is premature.

Based on the comments RSPA received in response to the NPRM, including the various alternatives and recommendations presented, RSPA has decided not to adopt the current proposal to increase the registration fees at this time. Regulations regarding registration (Subpart G to 49 CFR Part 107) are retained. Therefore, the annual registration fee remains at \$300. This decision will maintain the current levels of funding to the States and Indian